

Notices of Final Rulemaking

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6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The primary purpose of this rulemaking is to update the incorporated federal regulations in order to maintain at least equal to state status.

The applicable federal regulations in 9 CFR Chapter III have undergone eleven rulemakings since January 1, 2009. First, cattle that become non-ambulatory disabled cattle after their antemortem slaughter inspection can no longer be slaughtered for meat for human consumption. *See* 74 FR 11463-66 (March 18, 2009). Second, voluntary rules pertaining to inflating carcasses were amended. *See* 75 FR 69575-77 (November 15, 2010). Third, a voluntary nutritional labeling program for major cuts of single-ingredient, raw meat and poultry products and ground or chopped meat and poultry products has become mandatory. *See* 75 FR 82148-67 (December 29, 2010). Fourth, a voluntary program has been added that allows for certain meat and poultry inspected at a state-inspected facility to be sold in interstate commerce. *See* 76 FR 24714-59 (May 2, 2011). Fifth, the time it takes an inspector to don and doff work clothes now counts toward the inspector's 40 hour work week, thus potentially resulting in 15 minutes of overtime per day per inspector. *See* 76 FR 33974-80 (June 10, 2011). Sixth, the time it takes an inspector to sharpen knives, complete administrative activities, and prepare the inspection station also now counts toward the inspector's 40 hour work week. *See* 77 FR 59291-94 (September 27, 2012). Seventh, the definitions for certain classes of poultry are set to change on January 1, 2014 to more accurately and clearly describe the characteristics of poultry in the market today. *See* 76 FR 68058-64 (November 3, 2011). Eighth, inspected facilities must now (i) have recall procedures, (ii) allow officials to review and copy recall records and procedures, (iii) document reassessments of existing hazard analysis and critical control point (HACCP) plans, and (iv) notify USDA-FSIS within 24 hours of learning or determining that an adulterated or misbranded meat, poultry, or product has entered commerce and provide the type, amount, origin and destination. *See* 77 FR 26929-37 (May 8, 2012). Ninth, section 392 has been added, which relates to petitions for federal rulemaking. This new federal section does not need to be part of this state rule, so the Department is adding this new federal section to the list of excluded sections in the rule. *See* 74 FR 16104-08 (April 9, 2009). The remaining two rulemakings made technical changes to the rules without changing the intended meaning. *See* 76 FR 81360 (December 28, 2011) and 76 FR 82077-79 (December 30, 2011).

This rulemaking also clarifies the scope of the rule. The rule pertains to the requirements of 9 CFR Chapter III. Currently, only meat and poultry inspection and slaughtering procedures are specifically mentioned. However, 9 CFR Chapter III actually covers inspection, slaughtering, production, processing, labeling, storing, handling, transportation and sanitation. The Department has interpreted the current general references to inspection and slaughtering as covering all of 9 CFR Chapter III, but this rulemaking will make the rule more specific for added clarity and to match the authority granted under A.R.S. §§ 3-2046, 3-2088(B) and 3-2161. For the same reason, the heading of rule 202 is being expanded to include processing. The Department believes listing inspection, slaughtering, and processing in the heading is sufficient and that listing inspection, slaughtering, production, processing, labeling, storing, handling, transportation and sanitation in the heading would be unnecessarily long.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

9. The summary of the economic, small business, and consumer impact:

As more fully described in item #6, the rulemaking makes eight substantive changes. None of these changes are expected to require any new full-time Department employees. Also, the Department is not able to offer any less intrusive alternatives and still be "at least equal to" federal law.

First, cattle that become non-ambulatory disabled cattle after their antemortem slaughter inspection can no longer be slaughtered for meat for human consumption. The federal government estimated that in 2007 about 1,300 out of 33.7 million cattle nationwide became non-ambulatory disabled cattle after the antemortem slaughter inspection. The federal regulation being adopted by Arizona is designed to bring the nationwide figure of 1,300 down to 0. The purpose of this federal regulation is animal welfare. The federal government estimates that this change will cost the entire beef industry \$930,000 to \$1,370,000 annually, with \$883,000 to \$1,342,600 of that being born by smaller businesses. The federal government also estimates that the annual value of the beef industry is \$8.4 billion. The federal government expects that the beef industry will eventually pass this cost on to consumers. *See* 74 FR 11463-66 (March 18, 2009).

Second, the rulemaking adopts federal amendments to voluntary rules pertaining to inflating carcasses. Because air inflation is voluntary, the federal government believes the federal rule will not have an economic impact. *See* 75 FR 69575-77 (November 15, 2010).

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Third, the rulemaking adopts new federal requirements for nutritional labeling of major cuts of single-ingredient, raw meat and poultry products and ground or chopped meat and poultry products. The federal government tried a voluntary labeling program, but the federal government felt participation levels were too low. The federal government wants consumers to have precise information about fat content per serving so that consumers can make educated choices about consuming covered meat and poultry products. The federal requirements have several exemptions, including for small businesses with respect to labeling ground or chopped products. The federal government estimates the cost of labeling for major cuts to be \$0.0002 per pound and for ground and chopped products to be \$0.006 per pound or less. The federal government also estimates that the cost for retail stores that use point-of-purchase signs instead of product labels will be about \$1,537 annually (per store). *See* 75 FR 82148-67 (December 29, 2010).

Fourth, the rulemaking adopts a new federal voluntary program that allows for certain meat and poultry inspected at a state-inspected facility to be sold in interstate commerce. Presently, no meat or poultry inspected at a state-inspected facility may be sold in interstate commerce. The federal government estimates that state agencies will need about 40 hours to complete the steps necessary to join the program and another 24 hours per establishment that wants to participate. The federal government also estimates that about 25% of the establishments that wish to participate will need to spend about 16 hours in updating recordkeeping procedures. Since this program is voluntary, businesses don't have to incur any new costs. *See* 76 FR 24714-59 (May 2, 2011).

Fifth, the rulemaking adopts the federal regulation that identifies the time it takes an inspector to don and doff work clothes as time counting toward the inspector's 40 hour work week, thus potentially resulting in 15 minutes of overtime per day per inspector. The state overtime fee is \$19.40 per hour or \$4.85 per 15 minutes. Over 260 work days per year, there would be an overtime charge of \$1,261 per inspector at state inspected facilities. In comparison, federal inspected facilities would pay \$4,462 per inspector per year in overtime. The federal government believes the cost at federal inspected facilities will be passed down to consumers at a rate of \$0.0001 per pound. Facilities have the option of operating 15 minutes less each day to avoid overtime charges, but the revenue generated during those extra 15 minutes exceeds the cost of the overtime. The federal regulation is intended to meet the requirements of federal labor law. *See* 76 FR 33974-80 (June 10, 2011).

Sixth, the rulemaking adopts the federal regulation that identifies the time it takes an inspector to sharpen knives, prepare the inspection station, and complete administrative activities as time counting toward the inspector's 40 hour work week. The federal government believes the daily time to prepare the inspection station and to complete administrative activities is about 3 minutes. Because inspectors track time in 15 minute increments, these 3 minutes are unlikely to create any additional charge. The federal government estimates that knife-sharpening takes 15 minutes and needs to be twice a week for inspectors working 4 days or more and once a week for inspectors working 3 days or less. The federal government notes that many facilities perform this service for inspectors, such that the inspectors do not need to spend time to sharpen knives. The federal government estimates the cost per inspector per year for knife sharpening to be \$1,776.30 for 4 days or more workers and \$888.20 for 3 days or less workers if the facility does not provide the service. Because the state charge is considerably less than the federal charge, the estimated state charges would be \$504.40 and \$252.20 respectively. The federal government believes the cost at federal inspected facilities will be passed down to consumers at a rate of less than \$0.0001 per pound. The federal regulation is intended to meet the requirements of federal labor law. *See* 77 FR 59291-94 (September 27, 2012).

Seventh, the rulemaking adopts federal amendments effective beginning January 1, 2014 that redefine certain classes of poultry to comport with current market conditions and for increased clarity, consistency and uniformity. The federal government believes these changes may have some economic benefit for the industry, but will not have a significant effect on poultry prices. The new definitions lower the age limit for five classes of poultry, which benefits suppliers who will be able to sell birds at younger ages. In addition, some chickens that are "broilers" now will become "roasters," which means they might be sold at a higher per-pound price. The classification changes will result in the need to change labels, but industry will probably be able to make those changes at the same time it is changing the labels to comply with other federal regulations. The federal government believes the changes will not have much effect on consumer demand. According to the federal government, because these changes "will not have a significant effect on the demand side and [are] not imposing additional cost to the suppliers, there will not be significant change in prices." *See* 76 FR 68058-64 (November 3, 2011).

Eighth, the rulemaking adopts new federal regulations that require inspected facilities to (i) have recall procedures, (ii) allow officials to review and copy recall records and procedures, (iii) document reassessments of existing hazard analysis and critical control point (HACCP) plans, and (iv) notify USDA-FSIS within 24 hours of learning or determining that an adulterated or misbranded meat, poultry, or product has entered commerce and provide the type, amount, origin and destination. The requirements to allow review and copying of records and to notify USDA-FSIS of adulterated or misbranded product will have a negligible economic impact. The requirements to create recall procedures and document reassessments of HACCP plans are estimated to cost the 6,300 federally-inspected establishments nationwide a total of between \$4.7 and \$5.7 million the first year and approximately \$687,000 annually over years two through ten. Of the 6,300 nationwide facilities, there are 2,856 very small facilities (under 10 employees or less than \$2.5 million in sales) and 3,044 small facilities (10-499 employees). *See* 77 FR 26929-37 (May 8, 2012).

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

None

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11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The Department received no comments on the rule other than a vote of approval from the Department's Advisory Council.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Pursuant to A.R.S. § 3-104(F), the Department discussed this rulemaking with the ADA Advisory Council on March 21, 2013, and the Council voted in favor of the rulemaking.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rule does not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

9 CFR Chapter III is applicable to this rule. This rule is not more stringent than the federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Most of 9 CFR Chapter III, including 76 FR 68058-64 (November 3, 2011), is incorporated by reference in rule 202. Specifically excluded portions of 9 CFR Chapter III are sections 302.2, 307.5, 307.6, 312, 322, 327, 329.7, 329.9, 331, 335, 351, 352, 354, 355, 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218 through 381.225, 390, 391, 392, 590 and 592.

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

This rule was amended using an emergency rule. The Notice of Emergency Rulemaking was published at 19 A.A.R. 150, February 1, 2013. The following changes have occurred between the emergency and the final rulemaking packages.

This final rulemaking cites to the recently published 2013 version of 9 CFR Chapter III rather than the 2012 version. The 2013 version of the CFR simply incorporates rule changes published in the *Federal Register* (FR) during 2012, which rule changes were already incorporated into the emergency rule with the exception of 77 FR 59291-94 (September 27, 2012). So, this final rulemaking incorporates the requirements of 77 FR 59291-94 (September 27, 2012) when the emergency rulemaking did not. The purpose of the rulemaking is to update the reference to 9 CFR Chapter III from the 2009 version to the current regulations and incorporating the September 27, 2012 amendments is an important part of that effort. Unfortunately, the Department failed to identify the need to include this particular federal update at the time of adopting the emergency rule. The changes incurred by the new inclusion of 77 FR 59291-94 (September 27, 2012) are summarized in item #6 of this preamble. Because of the use of the 2013 version of the CFR, the final rulemaking does not need to specifically list 77 FR 26929-37 (May 8, 2012) as was necessary in the emergency rulemaking when the 2012 version of the CFR was used. Both the emergency rulemaking and this final rulemaking list 76 FR 68058-64 (November 3, 2011) because the effective date of that regulation is 2014.

Accordingly, the text of this final rulemaking has been changed from the text of the emergency rulemaking in two ways: the year "2012" as in "January 1, 2009, 2012" has been changed to "2013" to read "January 1, 2009, 2013" and the reference to "and 77 FR 26929-37 (May 8, 2012)" has been removed.

15. The full text of the rule follows:

TITLE 3. AGRICULTURE

**CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION**

ARTICLE 2. MEAT AND POULTRY INSPECTION

Section

R3-2-202. Meat and Poultry Inspection; Slaughtering and Processing Standards

ARTICLE 2. MEAT AND POULTRY INSPECTION

R3-2-202. Meat and Poultry Inspection; Slaughtering and Processing Standards

All meat and poultry inspection and slaughtering procedures inspection, slaughtering, production, processing, labeling, stor-

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ing, handling, transportation and sanitation procedures shall be conducted as prescribed in 9 CFR Chapter III, revised January 1, 2009, 2013 as amended by 76 FR 68058-64 (November 3, 2011), except sections 302.2, 307.5, 307.6, 312, 322, 327, 329.7, 329.9, 331, 335, 351, 352, 354, 355, 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218 through 381.225, 390, 391, 392, 590 and 592. This material is incorporated by reference and does not include any later amendments or editions. A copy of the incorporated material is available from the Department and may also be viewed at ~~www.gpoaccess.gov/cfr/index.html~~ or purchased from the U.S. Government Online Bookstore at ~~bookstore.gpo.gov~~ online at www.gpo.gov/fdsys.

NOTICE OF FINAL RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY

UNEMPLOYMENT INSURANCE

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 1845). the Governor's Office authorized the notice to proceed through the rulemaking process on December 18, 2012.

[R13-117]

PREAMBLE

1. **Article, Part, or Section Affected (as applicable)** **Rulemaking Action**
R6-3-1503 Amend
2. **Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. § 41-1954(A)(3)
Implementing statute: A.R.S. §§ 23-672, 23-681, 23-682, and 23-773
3. **The effective date of the rules:**
September 7, 2013
 - a. **If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
Not applicable
 - b. **If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**
Not applicable
4. **Citations to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
Notice of Rulemaking Docket Opening: 17 A.A.R. 1304, July 15, 2011
Notice of Rulemaking Docket Opening: 19 A.A.R. 50, January 11, 2013
Notice of Proposed Rulemaking: 19 A.A.R. 224, February 15, 2013
5. **The agency's contact person who can answer questions about the rulemaking:**
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 Phoenix, AZ 85005

or

 Department of Economic Security
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6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Laws 2008, Second Regular Session, Ch. 98 (H.B. 2204) amended A.R.S. §§ 23-671, 23-672, and 23-773. H.B. 2204 also allows parties in unemployment insurance proceedings to file certain documents with the Department electronically.

The proposed amendment to R6-3-1503 will accomplish the intent of this legislation by permitting an interested party to a determination of a Deputy or a decision of an appeal tribunal to electronically file an appeal or request to reopen.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

There will be a small cost savings to the State, since the State will not have to spend money on postage when a party consents to be served documents by electronic mail.

Small businesses and consumers will also benefit from this rule, since they will also be able to save money on postage by being permitted to submit documents electronically.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

The Department has not made any substantial changes since the Notice of Proposed Rulemaking was published on February 15, 2013. The Department has made some minor clarifying typographical and formatting changes at the recommendation of Council staff, including substitution of the term "facility" to "Internet application" in R6-3-1503(A)(3) to make the rule more clear and understandable.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

None

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Not applicable

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

These rules do not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

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TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY
UNEMPLOYMENT INSURANCE

ARTICLE 15. DECISIONS, HEARINGS, AND ORDERS

Section

R6-3-1503. Proceedings Before an Appeal Tribunal

ARTICLE 15. DECISIONS, HEARINGS, AND ORDERS

R6-3-1503. Proceedings Before an Appeal Tribunal

- A. Filing an appeal. Any interested party to a determination of a Deputy may appeal to an Appeal Tribunal within the time limits listed in A.R.S. § 23-773(B). The appellant may file the appeal ~~may be filed~~ personally, or by mail, ~~by fax, or by telephone, or Internet.~~
1. If the appellant files ~~An the appeal filed~~ personally, by mail, or by fax ~~shall be signed by the appellant or authorized agent shall sign the appeal and filed file~~ through any public employment office in the United States or Canada, or directly with the Department of Economic Security.
 2. If the appellant files ~~An the appeal filed~~ by telephone, the appellant shall be filed using use the toll-free telephone number listed on the determination.
 3. If the appellant files by Internet, the appellant shall use the Internet application maintained for that purpose on the Department's web site.
- B. Appeal Tribunal hearings
1. Manner of holding hearings. The Appeal Tribunal shall conduct all hearings in accordance with A.R.S. § 23-674, in a manner that ~~will shall~~ ascertain the substantial rights of ~~the persons involved~~ all the interested parties. The Appeal Tribunal shall require all testimony to be taken under oath or affirmation.
 2. No change
 3. Failure of a party to appear
 - a. ~~If there is no appearance on behalf of an interested party~~ fails to appear at a scheduled hearing, the Appeal Tribunal may:
 - i. No change
 - ii. No change
 - b. If the Appeal Tribunal issues a decision ~~is issued~~ adverse to any interested party that failed to appear at a scheduled hearing, that party may file ~~4 one~~ written request for a hearing to determine whether good cause exists to reopen the hearing. The interested party shall file the request to reopen ~~shall be filed~~ within 15 calendar days of the mailing date of the decision or disposition, and shall list the reasons for the failure to appear.
 - c. The Appeal Tribunal shall hold a hearing to determine whether there was good cause for the failure to appear, and, in the discretion of the hearing officer, to review the merits of the case. Upon a finding of good cause for failure to appear at the scheduled hearing, the Appeal Tribunal shall vacate the disposition or decision on the merits ~~shall be vacated and reschedule~~ the case rescheduled for hearing under R6-3-1502, unless the hearing on the merits is held concurrently with the good cause hearing.
 - d. ~~Good~~ A party shall establish good cause warranting reopening of a case ~~shall be established~~ upon proof that both the failure to appear and failure to timely notify the hearing officer were either beyond the reasonable control of the nonappearing party or due to excusable neglect.
 - e. A party may obtain only ~~4 one good cause hearing to determine whether good cause exists to reopen a case. for each hearing scheduled on the merits, therefore:~~
 - i. No change
 - ii. If the Appeal Tribunal reopens a case ~~is reopened~~ upon a finding of good cause, and the party fails to appear at the time and date of the new hearing, the party may file a written request for review to determine whether good cause exists for failure to appear at the new hearing.
 - f. A request for review of an Appeal Tribunal decision shall state the reasons for the party's failure to appear. The party shall attach copies of any documentation supporting the request.
 - g. No change
 - h. An interested party may file any request to reopen personally, or by mail, fax, or internet.
 - h.i. Any interested party may appeal, in writing, to the Unemployment Insurance Appeals Board from the decision of a hearing officer that denies reopening for lack of good cause, as defined in subsection (B)(3)(d). The party shall file the appeal ~~shall be in writing and filed~~ within 15 calendar days ~~from the date of~~ after mailing or electronic

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transmission of the decision denying reopening. If the Unemployment Insurance Appeals Board reverses the denial to reopen, the Board shall remand the case ~~shall be remanded~~ to the Appeal Tribunal and ~~rescheduled the Tribunal shall reschedule the case~~ for hearing on the merits in accordance with R6-3-1502.

i. No change

j. Notwithstanding ~~these the foregoing~~ provisions, an appellee who fails to appear may appeal to the ~~Unemployment Insurance Appeals Board~~ from an adverse decision on the merits within 15 calendar days ~~of the date of~~ after mailing or electronic transmission of the decision is served on the party.

C. Finality of Appeal Tribunal decision. Under A.R.S. § 23-671, the decision of the Appeal Tribunal becomes final unless an interested party files a written petition for review within 15 calendar days after ~~the decision is mailed~~ mailing or electronic transmission to the interested parties, or the Appeals Board assumes jurisdiction over the matter on its own motion. After a decision of the Appeal Tribunal has become final, the matter shall not be reopened, reconsidered, or reheard, and the decision shall not be changed except to correct clerical errors. Any interested party may file a petition for review personally, or by mail, fax, or Internet.

NOTICE OF FINAL RULEMAKING

TITLE 13. PUBLIC SAFETY

CHAPTER 7. DEPARTMENT OF PUBLIC SAFETY

REPORTING BY SCRAP METAL AND USED AUTOMOTIVE COMPONENTS DEALERS

PREAMBLE

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 1845). the Governor's Office authorized the notice to proceed through the rulemaking process on November 28, 2012.

[R13-119]

1. Articles, Parts, and Sections Affected (as applicable) Rulemaking Action

Article 1	New Article
R13-7-101	New Section
R13-7-102	New Section
R13-7-103	New Section

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 41-1713(A)(4)

Implementing statute: A.R.S. §§ 44-1327(B), 44-1644(B), and 44-1647

3. The effective date for the rules:

September 7, 2013

a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

4. Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 18 A.A.R. 772, March 30, 2012

Notice of Rulemaking Docket Opening: 18 A.A.R. 3325, December 21, 2012

Notice of Proposed Rulemaking: 19 A.A.R. 172, February 8, 2013

Notice of Public Information: 19 A.A.R. 412, March 8, 2013

Notice of Supplemental Proposed Rulemaking: 19 A.A.R. 516, March 15, 2013

5. The agency's contact person who can answer questions about the rulemaking:

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or

Name: Paul Swietek, Police Planner

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Web site: www.azdps.gov

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

In an effort to protect the environment from improperly disposed lead acid batteries, the legislature established reporting requirements for lead acid battery disposal and recycling under A.R.S. § 44-1327. As part of this effort and to thwart unlawful recycling due to theft, a used automotive components dealer is required to submit an electronic record regarding receipt of most lead acid batteries to the Department of Public Safety within 24 hours of receipt. The Department is required to establish standards for the electronic submission. This rulemaking establishes those standards.

Similarly, in an effort to combat the problem of metal theft, A.R.S. § 44-1644(B) requires a scrap metal dealer to submit an electronic record regarding receipt of most scrap metal to the Department of Public Safety within 24 hours of receipt. The Department is required to establish standards for the electronic submission. This rulemaking establishes those standards.

The Department was granted exceptions to the rulemaking moratorium contained in Executive Order 2012-03 in e-mails from Mr. Steven Killian dated March 22, 2012, and November 28, 2012.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review a study relevant to the rulemaking. The rulemaking does not rely on scientific principles or methods.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

The primary economic impact on used automotive components dealers and scrap metal dealers results from the legislature's decision to require recordkeeping and electronic submission of the records. The legislature specified the information that is required to be obtained of the lead acid batteries or scrap metal received and the seller of the lead acid batteries or scrap metal. The Department is providing a website database and online registration process at no cost to the dealers. The dealer's economic impact will be to maintain a personal computer operating with commonly recognized web-browser software and Internet connectivity. There are numerous software programs, many of which are available online at no charge, which a dealer can use to submit the required data. Therefore the Department believes that there will be minimal economic impact from the standards established in this rulemaking. In 2011, statewide damages of metal theft exceeded \$120 million. City of Phoenix residents and businesses received damages of approximately \$30 million. The Department believes there will be economic benefit to consumers as a result of not having to replace property stolen or damaged due to metal and lead acid battery theft. The benefits from reduced theft outweigh the costs of the rules.

10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:

The Department made numerous word choice and formatting changes between the supplemental proposed and final rules. All of these changes were done to make the rules more clear, concise, and understandable. None of the changes is substantial under the standards specified in A.R.S. § 41-1025(B). The persons affected by the rules, scrap metal and

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used automotive components dealers, remain the same. The subject of the rules, electronic submission standards regarding receipt of scrap metal or lead acid batteries, remains the same. The effect of the rules, requiring scrap metal and used automotive components dealers to submit electronic records of receipt of scrap metal or lead acid batteries, remains the same.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments:

In response to the Notice of Supplemental Proposed Rulemaking, a comment was received from Arizona Scrap Recyclers Association (ASRA). ASRA indicates that it understands the purpose of the rulemaking is to address electronic standards for reporting to the Department by scrap metal and used automotive components dealers, accepts the latest and revised version of the rules, and appreciates the responsiveness of the Department in addressing previously made comments.

ASRA expressed concern that proprietary information submitted to the database made available by the Department will be available to persons that might use the information to harm the submitting business. ASRA wants to ensure that confidential and sensitive data reported by industry is not disclosed and possibly misused. Although the concern of ASRA is beyond the scope of the rulemaking, the Department assured ASRA that its contract with the database provider requires that only law enforcement entities be allowed to access all information submitted. An industry member is allowed to access only the information the member submitted. The contract also provides that all data submitted are property of the state.

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law is not applicable to the subject matter of the rulemaking.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

No materials are incorporated by reference.

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

None of the rules was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

CHAPTER 7. DEPARTMENT OF PUBLIC SAFETY

REPORTING BY SCRAP METAL AND USED AUTOMOTIVE COMPONENTS DEALERS

ARTICLE 1. REPORTING BY SCRAP METAL AND USED AUTOMOTIVE COMPONENTS DEALERS

Section

R13-7-101. Definitions

R13-7-102. Electronic Standards for Reporting Receipt of Scrap Metal

R13-7-103. Electronic Standards for Reporting Receipt of Lead Acid Batteries

ARTICLE 1. REPORTING BY SCRAP METAL AND USED AUTOMOTIVE COMPONENTS DEALERS

R13-7-101. Definitions

In addition to the definitions provided under A.R.S. §§ 44-1321 and 44-1641 and for the purposes of this Article, the following definitions apply:

1. "Department" means the Arizona Department of Public Safety.

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2. "Scrap Metal and Lead Acid Battery Database" means the Internet-based database supported by the Department for the collection of data regarding the sale and purchase of scrap metal and lead acid batteries.

R13-7-102. Electronic Standards for Reporting Receipt of Scrap Metal

- A.** A scrap metal dealer required to submit an electronic record under subsection § 44-1644(A) shall submit the record into the Scrap Metal and Lead Acid Battery Database. To submit the record, the scrap metal dealer shall create an electronic account in the Scrap Metal and Lead Acid Battery Database. The scrap metal dealer may:
 1. Manually submit each record directly into the Scrap Metal and Lead Acid Battery Database, or
 2. Upload individual or batch records from a point-of-sale software program or other software program into the Scrap Metal and Lead Acid Battery Database.
- B.** A scrap metal dealer choosing to upload records under subsection (A)(2) shall conform to the following electronic submission standards:
 1. Have available and use Internet connectivity for submission to the Scrap Metal and Lead Acid Battery Database;
 2. Ensure when uploading an individual or batch record that:
 - a. The record is not any of the following electronic formats:
 - i. Joint Photographic Experts Group (JPEG), Tagged Image File Format (TIFF), Graphics Interchange Format (GIF), Portable Network Graphics (PNG), or any other picture format;
 - ii. Portable Document Format (PDF); or
 - iii. Word processing program format; and
 - b. The record submitted is in a format that enables the Scrap Metal and Lead Acid Battery Database to perform data parsing and configuration necessary to merge the record with the Scrap Metal and Lead Acid Battery Database.
- C.** A scrap metal dealer choosing to upload records under subsection (A)(2) shall ensure that the Department has current specifications regarding the format in which the records are submitted so the Department can make changes necessary to merge the records with the Scrap Metal and Lead Acid Battery Database.

R13-7-103. Electronic Standards for Reporting Receipt of Lead Acid Batteries

- A.** A used automotive components dealer required to submit an electronic record under subsection § 44-1327(A) shall submit the record into the Scrap Metal and Lead Acid Battery Database. To submit the record, the used automotive components dealer shall create an electronic account in the Scrap Metal and Lead Acid Battery Database. The used automotive components dealer may:
 1. Manually submit each record directly into the Scrap Metal and Lead Acid Battery Database, or
 2. Upload individual or batch records from a point-of-sale software program or other software program into the Scrap Metal and Lead Acid Battery Database.
- B.** When submitting a record into the Scrap Metal and Lead Acid Battery Database, a used automotive components dealer shall indicate that the record is about receipt of lead acid batteries.
- C.** A used automotive components dealer choosing to upload records under subsection (A)(2) shall conform to the following electronic submission standards:
 1. Have available and use Internet connectivity for submission to the Scrap Metal and Lead Acid Battery Database;
 2. Ensure when uploading an individual or batch record that:
 - a. The record is not any of the following electronic formats:
 - i. Joint Photographic Experts Group (JPEG), Tagged Image File Format (TIFF), Graphics Interchange Format (GIF), Portable Network Graphics (PNG), or any other picture format;
 - ii. Portable Document Format (PDF); or
 - iii. Word processing program format; and
 - b. The record submitted is in a format that enables the Scrap Metal and Lead Acid Battery Database to perform data parsing and configuration necessary to merge the record with the Scrap Metal and Lead Acid Battery Database.
 3. A used automotive components dealer choosing to upload records under subsection (A)(2) shall ensure that the Department has current specifications regarding the format in which the records are submitted so the Department can make changes necessary to merge the records with the Scrap Metal and Lead Acid Battery Database.